

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS**

IN RE NEW ENGLAND COMPOUNDING
PHARMACY, INC. PRODUCTS
LIABILITY LITIGATION

MDL No. 2419
Dkt. No. 1:13-md-2419 (RWZ)

THIS DOCUMENT RELATES TO:

All Actions

**PLAINTIFFS' STEERING COMMITTEE'S PROPOSED AGENDA
FOR THE AUGUST 7, 2014 STATUS CONFERENCE**

The Plaintiffs' Steering Committee proposes the following agenda for the August 7, 2014 status conference. All defendants whose counsel filed notices of appearance in the MDL have been given an opportunity to comment on this proposed agenda.

A. Report to the Court.

1. Status of mediation efforts [Mediation Order, Dkt. No. 394]
2. Status of insurance declaratory actions:
 - a. *Certain Underwriters at Lloyd's, London v. Ameridose et al.*, 1:13-cv-12609-FDS; *Ironshore Specialty Ins. Co. v. Ameridose et al.*, 1:13-cv-13000-FDS
 - i. Actions stayed [*Lloyd's* Dkt. 56]
 - ii. Status conference scheduled for September 11, 2014, at 2:00 PM
 - b. *Great American E&S Insurance Company v. Liberty Industries, Inc.*, 3:14-cv-00499-VLB (D. Conn.)
 - i. Action ongoing. Answer filed 7/15/14 [Dkt. No. 16].
3. Status of discovery
 - a. Discovery from Affiliated Defendants
 - i. PSC's motion to lift stay against the Affiliated Defendants
 - ii. Liberty's motion to lift discovery stay against Affiliated Defendants [Dkt. 1229]
 - iii. Bankruptcy settlement and forthcoming Motion for Stay contemplates discovery from Affiliated Defendants (due August 14)

- b. Access to discovery materials for Virginia mediation (requesting oral argument before September 11)
 - c. Ongoing discussions regarding common discovery with all defendants (per Judge Boal's request)
 - d. Filing of blank Plaintiff Profile Form (for TN plaintiffs) [Dkt. 1271]
- 4. Status of litigation track
 - a. Scheduling argument on motions to dismiss that will be ripe by the September 18, 2014 status conference (see # 13 below)
- 5. Status of bankruptcy
 - a. Chapter 11 Trustee's Notice Regarding Further Relief from Preservation Order [Dkt. 1174]
 - b. Liberty Industries, Inc.'s Preservation Request [Dkt. 1214]
 - c. UniFirst Corp.'s Preservation Request [Dkt. 1215]
 - d. The Tennessee Clinic Defendants' Preservation Request [Dkt. 1219]
 - e. Chapter 11 Trustee's Omnibus Response to Preservation Requests [Dkt. 1308]
- 6. Status of appeals
- 7. Schedule for future status conferences
 - a. September 18, 2014, at 3:00 PM EDT
 - b. October 23, 2014, at 2:00 PM EDT

B. Fully-briefed motions.

- 8. Motions to dismiss in *Pennington*, *Ramos*, and *Rivera* (oral argument requested during the August 7, 2014 status conference)
 - a. Motions to dismiss
 - i. Dr. Nitesh Bhagat's Motion to Dismiss for Failure to Serve a Proper Affidavit of Merit (*Ramos*) [Dkt. 1039] (oral argument requested by Dr. Bhagat)
 - 1. PSC Opposition [Dkt. 1091]
 - 2. Dr. Bhagat Reply [Dkt. 1182-1183]
 - 3. Plaintiffs' Surreply [Dkt. 1302-6]
 - ii. Dr. Nitesh Perkins's Motion to Dismiss (*Pennington*) [*Pennington* Dkt. 59]

1. Opposition [*Pennington* Dkt. 60]
 2. Plaintiffs' Surreply [*Pennington* Dkt. 63-7]
 - iii. Dr. Nitesh Bhagat's Motion to Dismiss for Failure to Serve a Proper Affidavit of Merit (*Rivera*) [MDL Dkt. 1194]
 1. Plaintiffs' Opposition to First Motion to Dismiss by Juanita Rivera [Dkt. 1217]
 2. Dr. Nitesh Bhagat's Reply in Support of Motion to Dismiss [Dkt. No. 1240]
 3. Plaintiffs' Surreply [Dkt. 1302-6]
 - b. Plaintiffs' motions to amend in same cases
 - i. *Rivera* [13-cv-10412, Dkt. 51-6]
 - ii. *Ramos* [13-cv-10410, Dkt. 51-6]
 - iii. *Pennington* [13-cv-10406, Dkt. 64-6]
9. PSC's Jointly Proposed Order Granting Common Benefit Motion (Dkt. 790) [Dkt. 1274]
 - a. Joint Objection of the Official Committee of Unsecured Creditors and its Member Representatives [Dkt. 1279]
 - b. PSC's Motion for Leave to File Reply [Dkt. 1290]
 - i. PSC's Reply [Dkt. 1290-1]
 - c. Joint Motion by Official Committee of Unsecured Creditors and its Member Representatives for Leave to File Joint Sur-reply [Dkt. 1293]
10. Chapter 11 Trustee's Motion for Entry of Supplemental Order Transferring Additional Wrongful Death Case [Dkt. 1252]
 - a. Insight Health Corp.'s Motion for Entry of Supplemental Order Transferring Additional Personal Injury Cases [Dkt. 1300]
11. Discovery-related motions
 - a. PSC's Motion to Partially Lift Discovery Stay against Affiliated Defendants [Dkt. 534] (already argued)
 - i. Various oppositions filed
 - b. Liberty's Motion for Order to Lift Stay With Respect to Affiliated Defendants [Dkt. 1229] (hearing date or assignment to Judge Boal requested)
 - i. PSC's Joinder [Dkt. 1260]
 - ii. Ameridose's Opposition [Dkt. 1262]

- iii. Chapter 11 Trustee's Opposition [Dkt. 1263]
- iv. Pharmacists Mutual Insurance Company's Opposition [Dkt. 1264]
- v. Opposition to Liberty Industries' Motion to Lift Discovery Stay by Medical Sales Management, Insider Individuals, and GDC Properties [Dkt. 1265]
- c. Saint Thomas Entities' Motion to Modify Case Management Order No. 6 [Dkt. 1075, 1076]
- d. Motion to Stay Discovery by Saint Thomas Health, Saint Thomas Network, Saint Thomas West Hospital [Dkt. 595, 596] (*Referred to Judge Boal*)
 - i. Hearing held July 17 [Dkt. 1127]
- e. Motion for Entry of Bellwether Trial and Pre-Trial Scheduling Order (St. Thomas Trial Plan) filed by PSC [Dkt. 837, 838] (*Referred to Judge Boal*)
 - i. Hearing held July 17 [Dkt. 1127]
- f. Motion for Entry of Deposition Protocol Order [Dkt. 996, 998, 1009, 1054] (*Referred to Judge Boal*)
 - i. Argued at April 10, 2014 hearing [Dkt. 1081]
- 12. PSC's Motion for Entry of Case Management Order Regarding Virginia Matters [Dkt. 1188]
 - a. Insight's Opposition to Motion for Order [Dkt. 1256]
 - b. Plaintiffs' Steering Committee's Reply [Dkt. 1289]
- 13. Motions for extension of time / briefing schedules
 - i. Third Jointly Proposed Unifirst and PSC Motion for Order to Set Briefing Schedule [Dkt. 1259]
 - ii. Joint motion to revise briefing schedule with APAC Centers for Pain Management and Randolph Chang [Dkt. 1230]
 - iii. Plaintiff's Counsel Tucker Law Group, LLC's Motion for Extension of Time to Respond to Defendant's Motion for Summary Judgment (1:14-cv-10434-RWZ) [*King* Dkt. 17]
 - 1. Tenet HealthSystem Hahnemann LLC's and Hahnemann University Hospital's Opposition to extension request [*King* Dkt. 18]
- 14. Dispositive motions ready for argument by the September 18, 2014 status conference

- a. Cincinnati Pain Management Consultants Motion to Dismiss [Dkt. 1013, 1014]
 - b. BKC Motion to Dismiss [Dkt. 896, 897]
 - i. PSC Opposition [Dkt. 1062]
 - c. APAC Motion to Dismiss for Failure to State a Claim [Dkt. 1108, 1109]
 - d. Dallas Back Pain Management/Momentum Pain Management and Abbaselom Ghermay's Motion to Dismiss [Dkt. 1133, 1208, and 1209]
 - i. Henley Opposition [Dkt. 1124, 1241]
15. Motions already heard (oral argument held on June 18)
- a. Premier Orthopedic and Sports Medicine Associates of Southern New Jersey, Motion to Dismiss (Global Claims) [Dkt. 831]
 - b. Tennessee Clinic Defendants' Motion to Dismiss (Global Claims) [Dkt. 771, 772] and St. Thomas Entities' Motion to Dismiss (Global Claims) [Dkt. 893, 894] and Ascension Parties' Motion to Dismiss (Global Claims) [Dkt. 895, 896]
 - c. Tennessee Clinic Defendants' Motion to Dismiss (Failure to Comply with Tenn. Code. Ann. 29-26-121) [Dkt. 770, 898, 899, 924, 925] and St. Thomas Entities' and Ascension Parties' Motion to Dismiss (Failure to Comply with Tenn. Health Care Liability Act) [Dkt. 779, 780]
 - d. Plaintiff's Counsel Tucker Law Group, LLC's Motion to Withdraw as Counsel for Plaintiff Norma King (1:14-cv-10434-RWZ) [*King* Dkt. 11]
 - i. Tenet HealthSystem Hahnemann LLC's and Hahnemann University Hospital's Opposition, [*King* Dkt. 14]

C. Briefing in progress.

16. Ameridose's Motion for Order to Proceed with Destruction of Recalled Inventory [Dkt. 1090]
- a. UniFirst's Response [Dkt. No. 1272]
 - b. Tennessee Clinic Defendants' assented to motion for extension of time to respond [Dkt. 1307]
17. Insight's Motion to Strike Eighteen State Court Orders as Void ab initio [Dkt. 1284, 1285]
18. Discovery-related motions:
- a. Comparison of Proposed Discovery and Bellwether Trial Plan [Dkt. 1292]
 - i. Defendants' responses due August 7, 2014

ii. PSC reply due August 21, 2014

19. Dispositive Motions:

a. UniFirst Motion to Dismiss [Dkt. 1050, 1051, 1052]

20. Trustee's Motion re Dkt. 1131 Order on Motion for Miscellaneous Relief, Dkt. 1173
Order Chapter 11 Trustee's Motion for Entry of Supplemental Order Transferring
Additional Wrongful Death Case (Gaskin) [Dkt. 1252]

21. PSC's Motion to Amend Previously filed Short Form Complaints [Dkt.1291]

a. Meet and confers ongoing, oppositions due August 7, 2014

b. Tennessee Clinic Defendants' response [Dkt. 1304]

22. Insight Health Corp.'s Motion for Reconsideration and Leave to Amend Responses to
Request for Admission and to Supplement Motion for Reconsideration of Partial
Summary Judgment [Dkt. 1281 and 1282]

23. Insight Health Corp.'s Motion to Transfer Cases from Roanoke City Circuit Court to
Massachusetts by Insight Health Corp. (*Fidler, et al; Clemons, and Lester*) [Dkt. 1300,
1300-1]

Dated: August 6, 2014

Respectfully submitted,

/s/ **Kristen A. Johnson**

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*Plaintiffs' Lead Counsel on behalf of the Plaintiffs'
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CERTIFICATE OF SERVICE

I, Kristen A. Johnson, hereby certify that I caused a copy of the above Jointly Proposed Agenda for the August 7, 2014 Status Conference to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: August 6, 2014

/s/ Kristen A. Johnson

Kristen A. Johnson, BBO # 667261